

CONSUL. GENL. INDIANES. TEXAS. 1875.

Library

University of Pittsburgh



Class .....

Book .....





# REPORTS.

*Constitutional Convention State of Texas*

COMMITTEE ROOM, }  
Sept. 20, 1875. }

*Hon. E. B. Pickett, Chairman of the Convention:*

The undersigned, constituting a majority of the select committee to whom was referred a resolution, and also a proposed ordinance providing for the postponement of the election for members of the Legislature and other officers, to be held according to the existing laws of the State, on the first Tuesday of December, 1875, beg leave to make the following report :

They have carefully considered the subject and have availed themselves of all sources of information that were accessible to them.

It is not their purpose, nor do they deem it necessary that they should enter in this connection, at length, into the consideration of the question as to the extent of the powers of this Convention and under what circumstances or conditions it can exercise such powers as it may possess. In the matter under consideration, they have arrived at the conclusion that this Convention has the power, and that it is duty to the people of the State to postpone said election, and the assembling of the Legislature in January next.

One of the main abuses, that this body has been assembled by the people, to inquire into and correct, is the almost unlimited power now vested in the Legislative Department of this State by the present Constitution.

The Convention has directed one of its standing committees to examine into and report upon the existing abuses in that department and to suggest the remedy for them.

This duty that committee has performed, and their report is now

before this body. They recommend very important and necessary changes in that department of the State government, restricting its powers, altering its sessions, the number of its members, and making many other important alterations.

That most of the changes recommended, will be adopted by this body and accepted by the people of the State, there is no doubt.

While, then, this body, in the plain discharge of its duty, is in the act of thoroughly reforming and reorganizing this branch of the government, it seems to the majority of the committee, not only to be proper but to constitute an important part of the duty enjoined on them by their election, to postpone for the present, the meeting of the Legislature, when its assembling in Jannary next could have no other effect than to create confusion, conflict, embarrassment and add greatly to the expenses of the people of the State, without any corresponding benefit to be derived from their assembling together.

It is to be presumed that the Legislature that passed the joint resolution providing for taking the popular vote as to the assembling of the present Convention, would have provided a mode of obviating the difficulties and embarrassments attending an election in December, to the convening of the Legislature in January next.

But it was a subject practically beyond legislative control, for it was impossible for that body to foresee and in advance determine at what period this body would end its labors, or on what day it would submit its work to the people. No action could be taken by them, because it was a matter for which they could not provide. It was a subject intimately connected with that of the submission of the present work of the present Convention to the people, a duty which specially devolves upon the Convention. If they believe the election in December next presents an obstruction, or greatly embarrasses the people, and will in some measure tend to prevent them from passing fairly, and fully upon the merits of the instrument submitted, it is within the scope of their

authority, and clearly within the line of their duty, to take all the steps necessary and proper to enable the will of the people to be freely and fairly ascertained.

The direct expense to the State arising from ordering the election, issuing proper notices, preparing, printing, and distributing instructions and forms to the different officers of the State charged with due execution of the election laws, together with the expense entailed on registration will not fall short of \$30,000 and may greatly exceed that amount. The mileage and *per diem* of the Legislature alone may add and probably will reach the sum of \$100,000, that of the three last Legislatures exceeded that sum. The other contingent expenses will probably reach the sum of \$30,000.

The expense, and loss of time to the voters in the State, would not fall short of \$150,000. In addition to this it must be borne in mind, that there is practically no limitation on the power of the Legislature to create a public debt, and but little limitation on their power to appropriate public money, we may safely assume, that other expenses incurred by them will increase the estimate of expenses before made, and that the total expense to the people and the State of this unnecessary and useless election and assembly of the Legislature will exceed \$300,000. Furthermore under the Act of Congress of 25th July, 1866, providing that the Legislature of each state, which is chosen next preceding the expiration of the term for which any United States Senator from such state is chosen, was elected, shall on the 2d Monday after they meet, elect a United States Senator, it becomes the duty of the Legislature which meets on the 2d Monday in January next to elect a United States Senator. If prior to the 4th of March, 1877, a new Legislature should assemble, organized under the provisions of the Constitution that may be framed by this Convention, it would also be beyond all doubt a Legislature chosen next preceding the expiration of the time for which one of the United States Senators from Texas was elected, and it would also be their duty under this act of Congress to elect a United States Senator.



If they did not exercise the power a very serious question would arise as to whether the Legislature that met in January, 1875, was the proper body to elect a United States Senator. If the Legislature organized under the provisions of the Constitution framed by this body should elect a United States Senator, then it would result that there would be two persons elected both claiming at the same time to be duly elected to the Senate of the United States.

By refusing to postpone the election in December next we become directly responsible to the people for all the expense incurred and other evil consequences resulting from this state of affairs.

Again, if the Convention should work harmoniously together, there is no reason why they may not complete their work and have a Constitution ready for submission to the people by the first of November next. The Convention of 1845, whose duties were very arduous, involving, as it did, a change from an Independent Republic to a State of the Union, only sat fifty-three days. If then we can in sixty days complete our work, there is no good reason why it should not be submitted to the people on the first Monday in January. This would give them sixty days to consider, if the Convention of 1845 did not give as much as sixty days notice. That Constitution was framed on the 27th August 1845, and ratified by the people on the second Monday in October 1845. The Convention of 1866, submitted their work to the people with notice of only sixty days. Since then the means of communication throughout the State have greatly increased, and now within sixty days, information can be conveyed throughout the State, as fully as it could be done in ninety days in 1845 or 1866. If then in accordance with affirmed precedents in this State, this body should complete its work in sixty days and submit it for the acceptance or rejection of the people in January next as we believe can be done and probably will be done, we would have the spectacle of a Legislature assembled at a cost of thousands of dollars, to our already tax-burthened people to accomplish nothing whose official



existence, if the constitution 'was submitted to the people on the second Monday in January, and on that day accepted by them, would end on the day that it commenced. By virtue of the power which this Convention has to regulate the time, manner, and conditions on which its work shall be submitted to the people, we believe it can prevent the occurrence of such a state of things, it is a power incidental to and growing out of the express and unqualified grant of power to them from the people to frame and provide for putting in operation the Constitution. Its exercise is necessary in order that the people may be able at the least possible expense and without embarrassment from other matters growing out of the assembling of the Legislature to vote fully and fairly on the merits of the instrument submitted to them.

The undersigned have examined the subject in its various aspects, and the ordinance which they herewith submit makes provision so that in case the proposed Constitution is rejected elections for members of the XVth Legislature and other State, District and County officers may be ordered by the Governor. It also provides for the continuation in office of the present incumbents until their successors are elected and qualified.

Should there arise any great unforeseen public emergency before the Constitution is voted upon, the Governor, under the provisions of the ordinance reported, would have the power by his proclamation to convene the XIVth Legislature in extraordinary session.

The majority of the committee can not see how or in what manner any conflict of authority or serious inconvenience or injury to the public interest, can result from the passage of the ordinance contemplated, nor have they any reason to apprehend any conflict from any quarter. On the contrary, they believe it will be the duty of every officer of the State from the highest to the lowest to co-operate earnestly and cheerfully with the Convention, in saving this heavy and worse than useless expense to the State, and in preventing

all the inconvenience, conflict, embarrassment and confusion that will be certain to flow from the election in December next.

It is to be regretted that the committee are not of one mind on this important matter. But the power of the Convention to pass the ordinance in question, appears so well founded and so clear, and the duty of exercising that power so imperative, that they do not hesitate to recommend the adoption of the accompanying ordinance, which they have prepared as a substitute for the resolutions and ordinance that were referred to them.

Respectfully submitted,

CHARLES DEMORSE,  
F. S. STOCKDALE,  
C. S. WEST,  
JOHN HENRY BROWN.

While I did not participate in the preparation of the ordinance, and report on this subject, I concur with the majority of the committee in their conclusions.

J. H. REAGAN.

---

## AN ORDINANCE.

An Ordinance postponing the General Election of December, A. D. 1875, and for other purposes.

Whereas, It is provided by law under the existing Constitution, that a general election for members of the Legislature, Assessors and Collectors, and some other officers, shall be held on the first Tuesday in December, A. D., 1875;—and

Whereas, By authority of law and the sanction of the people, delegates, legally elected, are now assembled in Convention to frame a new Constitution for the State of Texas;—and

Whereas, The election of a Legislature and other officers, and the coming together of the Legislature to hold its session under the existing

laws and Constitution, are, for the time being, unnecessary, and will cause great public expense, and are likely to produce confusion in putting the new Constitution in operation, if one shall be established; together with doubts as to the validity of the election of a United States Senator if two Legislatures shall assemble during the next year; and can only aggravate the evils, to remedy which, this Convention was assembled by the People; and

Whereas, It is the duty of the Convention to save to the State the unnecessary expense and to prevent the occurrence of the other evils aforeaid; Now, therefore,

Be it ordained by the people of the State of Texas, in Convention assembled:

That the holding of the election, as provided by the laws under the existing Constitution, to be held on the first Tuesday in December, A. D., 1875, be, and the same is, hereby suspended and postponed; and all officers of this State are hereby prohibited from holding, and from, in any manner, aiding in the holding of said election; and any election held on that day is hereby declared to be void and of no effect.

Sec. 2. The terms of office of the members of the present Legislature, and of all other officers, whether State, district or county officers, whose terms of office by existing laws or Constitution will expire on said first Tuesday in December, A. D., 1875, or at any time thereafter, before a general election is held, be, and the same are hereby extended; and said members of the Legislature and other officers shall remain in office, and continue to exercise the powers and perform the duties of their places and offices, under existing laws and pursuant to the existing Constitution, until their successors are duly elected and qualified in accordance with the further provisions of this ordinance or until they are superseded by the establishment of a new Constitution.

Sec. 3. In case the new Constitution, when submitted to the People, be rejected by them, then, the Governor of the State of Texas shall, within ten days after the official promulgation of such rejection, issue his official proclamation, fixing a day for a general election, to be held in accordance with existing laws, giving sixty days notice of such election, at which election there shall be elected all the members of the Legislature and other officers, which, but for this ordinance, would have been chosen on

the first Tuesday in December, A. D. 1875; and the election so held shall be deemed and taken to be and it is hereby declared shall be, a general election under the existing laws and Constitution of the State of Texas. And the Governor shall also name, in said proclamation the day on which the Legislature shall assemble. When the Legislature shall be assembled pursuant to the proclamation of the Governor, its session shall be taken and deemed to be, and it is hereby declared that it shall be, the first session of the Fifteenth Legislature under the existing Constitution and laws of this State. And the terms of office of the members of the Legislature and other officers elected according to the provisions of this ordinance, shall expire and determine at the same time and in the same manner as if they had been elected on said first Tuesday in December, A. D. 1875.

---

## MINORITY REPORT.

Mr. Ballinger submitted the following report:

COMMITTEE ROOM, }  
Sept. 21, 1875. }

*To the Hon. E. B. Pickett, President of the Convention:*

The undersigned, members of the Select Committee, to which was referred ordinances for the postponement of the election in December, are unable to concur in the conclusions of the majority of the committee, recommending an ordinance by the Convention for that purpose. The subject is of such importance, that we deem it our duty to make known our dissent from the majority, and to state very briefly the heads of our own conclusions after most careful deliberation.

We are unable to recognize, on the part of this Convention, any rightful authority to put in force the ordinance recommended by the committee.

This Convention was elected by the people of the State, under a law of the last Legislature, which provided as follows:

“That a Convention to frame a new Constitution for the State of Texas shall assemble at the city of Austin on the first

Monday in September, 1875, for the purpose of framing a Constitution."

We think that the only power possessed by the Convention, under their election by the people held in pursuance of this law, is to "*frame*,"—that is to plan, to devise, to form a constitution; and to submit the same to the people of the State for their adoption or rejection.

We think that this submission of the Constitution to the people is not merely a political duty of the Convention, but that it is legally, indispensably *necessary*, under the construction of its powers derived from its election under the above law; and that, without the ratification of the people, the Convention, by and of itself, has no power to ordain and establish a Constitution, or any part thereof.

We think that outside of its duty to frame and submit a constitution to the people, the Convention has no powers of sovereignty,—no powers legislative, executive or judicial.

Whilst we recognize fully that the Convention does possess the power to put in force the measures necessary to the submission of the Constitution to the people so as to secure their free and full action for its adoption or rejection, we are wholly unable to appreciate that the election in December can, in any manner whatever obstruct the submission to the people of the Constitution to be framed by the Convention, or their action upon the same.

The considerations involved as to the election in December are alone those of economy, convenience, &c., and are not within the cognizance of this Convention. The Legislature, in full view of the situation, declined to postpone the elections in December. Their occurrence may operate as something of a grievance to the people. Or, it may be, on the other hand, that interference by Convention,—depriving the State of its regular legislative body, depriving districts and counties of their legal officers, and keeping in place those whose terms will have expired, dislocating a



regular State election and putting the official authority to be exercised in this State by many officers for two years (should the Constitution not be ratified) on the hazard of the doubtful power now being exercised, it may be, we say, that this will be productive of a degree of inconvenience and confusion of far greater magnitude than the slight benefits which are possible to result from this ordinance.

Whatever may be the contrast of results of this character, it is our thorough conviction that cognizance of them is wholly beyond the authority of this Convention. It will be a usurpation of most dangerous principle. If the Convention can suspend a general election, and prolong the terms of legislators and district and county officials, expiring under the existing constitution and laws, we do not perceive what the Convention could not do. It could suspend or prolong, at pleasure, the executive officers of the government and the judicial officers of the government. All individual rights would be subject to it. Its will would demark the extent of its power.

The undersigned do full justice to the motive alone of public good which actuates the committee. Forbearance may afford protection against further dangers beyond the present ordinance. But we establish a principle, we set an example, which only needs evil times, or may only need a day of high excitement or passion, to be a principle and example of most dangerous augury.

If the regulation of the election in December can be brought within the range of the powers of this Convention to provide a new organic law for the State, if it should have any place in the government we are to frame, the ordinance to effect it should be submitted to the ratification of the people and to receive the same sanction on which all and every part of the Constitution will depend.

Respects of W. P. BALLINGER, -  
JOHN L. HENRY.

J. D. LOGAN & CO., BOOK AND JOB PRINTERS.

*Ordinance adopted - wrote W. P. B  
art. 1/25 asking  
copy of Dec. 2 Proc. or Journal*





